

**BEFORE THE
FEDERAL AVIATION ADMINISTRATION
OFFICE OF CHIEF COUNSEL
WASHINGTON, D.C.**

Reports by Carriers on Incidents)
Involving Animals During Air)
Transport)

Docket No. FAA-2002-13378

**COMMENTS
OF
NORTHWEST AIRLINES, INC.**

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Dated: December 27, 2002

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The purpose of section 41721 is wholeheartedly endorsed by Northwest, and Northwest offers these comments solely to assure that purpose is advanced in the final rule. The rule, with the revisions proposed by Northwest, is attached as Appendix A. Basically, Northwest proposes three revisions: a refined definition of “animal”; better-defined reporting requirements; and a limitation of the reporting requirement to domestic scheduled passenger operations to avoid discrimination vis-à-vis non-U.S. and all-cargo airlines.

Background

Northwest’s Priority Pet Program

1. Northwest is one of the largest carriers of animals in the U.S. airline industry. Several years ago, Northwest established the Priority Pet Program to assure that pets receive the highest possible level of care, over and above that required by the Animal Welfare Act. There are eighteen Priority Pet Coordinators at Northwest’s busiest airports and a dedicated toll-free Priority Pet Center Information Line open twenty-four hours every day. But the most important

person in this process is the accompanying passenger or shipper. Northwest devotes substantial effort to educating accompanying passengers and shippers on the appropriate procedures.

2. As a result of this program, Northwest receives few claims involving animals. The death or serious injury of an animal entrusted to Northwest is extremely rare and is usually caused by oversedation or a latent medical condition, causes beyond the control of the company. The experience of Northwest is not unusual among the major U.S. airlines.

History of Section 41721

3. In 1999, and based on incorrect information that “as many as 5,000 animals transported by air are lost, injured or killed each year,” the Safe Air Travel for Animals Act (SATAA) was introduced in the Senate and the House. 106th Cong., 1st Sess., S.1193 and H.R.2776. SATAA contained a reporting requirement as well as contract of carriage requirements and enforcement provisions. SATAA would have amended the Animal Welfare Act to include a requirement that “an airline carrier that causes, or is otherwise involved in or associated with, an incident involving the loss, injury or mishandling of an animal during air transport” shall file a report with the Departments of Agriculture and Transportation. The term “animal” would be as defined in the Animal Welfare Act. The report would be limited to date, time, location, probable cause and remedial action. No time limits were imposed on the filing of such reports. The full Congress never considered SATAA.

4. The bills that eventually became AIR 21 went to Conference in March 2000. The Senate had proposed an amendment substantially similar to SATAA. The Conference Committee favored a middle ground:

The managers have heard from animal rights activists and citizens who use airlines to transport animals. They have sharply differing views over the extent of the problem and the appropriate remedy. Accordingly, the Conference Report

modifies the Senate provision to ensure that airlines will continue to be able to carry animals while information is collected to determine whether there is a problem that warrants stronger legislative remedies.

House Report 106-513 (March 8, 2000). This middle ground rejected a broad definition of “animal” and focused on purposeful information gathering.

The AVMA Study Group

5. In December 2000, USDA-APHIS authorized a third-party study of the transportation of animals by air. USDA-APHIS invited the American Veterinary Medical Association (AVMA) to participate. Three months ago, the AVMA Animal Air Transportation Study Group issued its report.¹ The Study Group’s investigation “revealed general due diligence by those airlines visited for the transport of dogs and cats, providing the animals’ owners and the public a significant degree of comfort, confidence and reliability.” AVMA Study Group Report at 2.

Proposed Revisions

The Definition of “Animal”

6. The NPRM defines “animal” as “any warm or cold-blooded animal which at the time of transportation, is being kept as a pet in a family household in the United States, or is being transported for the purposes of being sold as a pet in a family household in the United States.” This is narrower than the definition in the Animal Welfare Act and regulations to the extent that it is limited to pets. However, it is broader to the extent that it includes cold-blooded animals and birds. 7 U.S.C. §2132(g) and 9 C.F.R. §1.1. The AVMA Study Group limited its inquiry to dogs and cats, and that is a fair description of the types of animals Section 41721 reporting

requirements' are intended to reach. For purposes of consistency with the Animal Welfare Act and regulations, "dogs" should include "those used for hunting, security or breeding purposes."

Id.

Reporting Requirements

7. Section 41721 requires the reporting of all "incidents," but that term is not defined. The triggering measure for reporting should be the measure that applies in other aviation consumer protection reporting when an objective measure is not available -- the filing of a complaint with the air carrier. For example, air carriers do not report mishandled bags to the DOT for inclusion in the baggage-handling statistics. Instead, they identify the number of mishandled baggage complaints filed with the carrier by or on behalf of the passenger. 14 C.F.R. §234.6. Simply put, if the accompanying passenger or shipper does not feel that the matter is serious enough to warrant a complaint to the carrier, it should not be reported to the government.²

8. The NPRM would require the monthly report to "describe the cause of the incident." This is usually an impossible task. When a complaint is made to Northwest about the transportation of an animal, an investigation is begun. The filing of a complaint by a passenger, of course, does not mean that the carrier was responsible, or acknowledges responsibility, for the incident. If the animal died or was injured while in the custody of Northwest, the company will ask for permission to have an animal examination or necropsy performed by a veterinarian at the

(...continued)

¹ A Report from the American Veterinary Medical Association Animal Air Transportation Study Group (September 26, 2002). The AVMA Study Group Report is available online at www.avma.org.

² Interestingly, the Senate amendment modified by the Conference Committee focused on "consumer complaints involving animals." House Report 106-513 (emphasis added).

company's expense. If permission is refused, the company has no way to make even a preliminary determination with respect to causation. A report cannot be filed until after there is a determination of causation; and a determination of causation is relevant only if the carrier could have prevented the incident.

9. The AVMA Study Group recognized that “a reportable incident is the death, injury, or escape of an animal while in the physical custody of the carrier, which after investigation, is proven to be the result of a preventable action by the carrier.” AVMA Study Group Report at 8.³ That methodology is reasonable and is followed in the revised Part 119.72 in Appendix A.

10. The NPRM also would require a “narrative description of any corrective action taken in response to the incident.” As with causation, if this is retained it should be with the realization that the information cannot be provided until after there is a determination of causation.

11. Finally, the NPRM would require (3) the name of the animal, (4) the names of the owner and/or guardian of the animal and (8) the name, title, address and telephone number of the carrier employee or agent filing the report. None of this personal information is required by Section 41721. Items (3) and (4) would violate the privacy of the owner and/or guardian of the animal. Item (8) would violate the privacy of the carrier employee submitting the report and subject that person to possible harassment. These items should be eliminated.

³ The Study Group stated that a “non-reportable incident may include but is not limited to: sedation, tranquilization, or medication of the animal; death, injury or escape of the animal as a result of the animal's own actions; death, injury or escape of the animal after the animal has been released to the consignee or otherwise is not in the physical custody of the carrier; known or unknown illness or other physical or mental condition of the animal; and an unknown defect in the animal container that was not apparent to the shipper or carrier at the time of acceptance.” Study Group Report at 8.

Scope

12. Section 41721 and the NPRM apply only to U.S. scheduled passenger air carriers. If the NPRM is read broadly, it extends to incidents occurring anywhere in the world. This is an unreasonable burden to impose upon only U.S. scheduled passenger air carriers. It is imperative that DOT limit the scope of the reporting requirement to domestic air transportation in scheduled passenger service.

13. Northwest, for example, has extensive international scheduled passenger service. It also operates all-cargo service in the transpacific market with freighter aircraft. Under a broad reading of the NPRM, Northwest would be required to report any “incident” anywhere in the world on any of its aircraft. At the same time, Northwest’s U.S. all-cargo competitors and non-U.S. scheduled passenger and all-cargo competitors would not be subject to any reporting requirement whatsoever. The Final Rule should address this competitive inequity by limiting the scope of the reports to “incidents” occurring in connection with domestic scheduled passenger flights. That was the focus of Congressional interest in any event.

Conclusion

The revisions discussed above and set forth in Appendix A would conform the effect of the proposed regulation with its intent to promote the safe transportation of pets. With or without the regulation, however, pets will remain a priority for Northwest.

Respectfully submitted,

/s/ Megan Rae Rosia /s/

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APPENDIX A

Northwest's Revised Part 119.72

119.72 Reports by air carriers on incidents involving animals during air transport.

119.72 Reports by air carriers on incidents involving animals during air transport.

- (a) Any air carrier that provides scheduled passenger air transportation shall, within 15 days of the end of the first month in which the information required below becomes available, submit to the Animal and Plant Health Inspection Service, United States Department of Agriculture, a report on any incidents involving the loss, injury, or death of an animal during air transport provided by the air carrier.
- (b) The report shall be made in the form and manner set forth in reporting directives issued by the Animal and Plant Health Inspection Service, and shall contain the following information:
 - (1) Carrier and flight number;
 - (2) Date and time of the incident;
 - (3) Narrative description of the incident;
 - (4) Narrative description of the cause of the incident; and
 - (5) Narrative description of any corrective action taken in response to the incident.
- (c) For the purposes of this section:
 - (1) The air transport of an animal includes the entire period during which an animal is in the custody of an air carrier, from check-in of the animal prior to departure until the animal is returned to the owner or guardian of the animal at the final destination of the animal; and
 - (2) Animal means any dog or cat, which, at the time of transportation, is being kept as a pet in a family household in the United States, or is being transported for the purpose of being sold as a pet in a family household in the United States. This includes dogs used for hunting, security or breeding purposes.
 - (3) Incident means a complaint about the death, injury or escape of an animal filed with an air carrier by an accompanying passenger or shipper and which, after investigation, the death, injury, or escape of an animal is proven to be the result of a preventable action by the air carrier.
 - (4) Air transport means intrastate or interstate scheduled passenger air transportation. It does not include incidents occurring in international air transportation or on all-cargo flights.